

REMARKS

This is a Response to the Office Action mailed November 17, 2006, in which a three (3) month Shortened Statutory Period for Response has been set, due to expire February 17, 2007. Seventeen (17) claims, including two (2) independent claims, were paid for in the application. Claim 1 is amended and claim 16 is canceled. No new matter has been added to the application. A fee for a one (1) month extension is due by way of this amendment. The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090. Upon entry of the amendments herewith, claims 1-15 and 17 remain pending.

On the Office Action Summary Sheet, the checked marked boxes 4 and 6 indicate that claims 1-16 are pending and rejected in the present application. However, claim 17 is also pending, and has been rejected at paragraphs 5, 9 and 11. Apparently, the error in the checked marked boxes 4 and 6 is a typographical error. Applicants thank the Examiner for examination of claims 1-17.

1. Acknowledgement of Claim of Priority

The Office Action summary sheet, per the check marked boxes 12, 12a and 12a1, acknowledges receipt of the priority Japanese Patent (JP) Application No. 2003-090510 filed on March 28, 2003. To provide evidence of the technical content of the JP Application No. 2003-090510, Applicants are obtaining a certified translation of the priority JP Application No. 2003-090510. This translation has been requested, but unfortunately, was not received in time to file as of the date of the filing of this response. The certified translation of the JP Application No. 2003-090510 is expected soon and will be provided to the Examiner as soon as it is received.

2. Rejections Under 35 U.S.C. § 102(e)

In the Office Action, at paragraph 3, claims 1-3, 5, 7, and 10 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by *Shingai et al.* (U.S. Patent Publication No. 2004/0053166), hereinafter *Shingai*.

The Applicants respectfully point out that *Shingai* was filed in the U.S. on September 9, 2003. The present application was filed in the U.S. on March 25, 2004 and claimed priority to Japanese Patent Application No. 2003-090510 filed on March 28, 2003. The March 28, 2003 foreign priority date of Japanese Patent Application No. 2003-090510 precedes the September 9, 2003 filing date of *Shingai*. Therefore, *Shingai* does not properly qualify as prior art. The above-described certified translation of the priority document, JP Application No. 2003-090510, will confirm that the above identified claims are fully supported by the original priority documents as filed in Japan. Accordingly, Applicants respectfully request withdrawal of the above-rejection of claims 1-3, 5, 7, and 10 as allegedly anticipated by *Shingai*.

3. Rejections Under 35 U.S.C. § 103(a)

In the Office Action, at paragraph 4, claims 1-7, 10, and 13 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Kato et al.* (U.S. Patent Publication No. 2004/0146805), hereinafter *Kato*. At paragraph 5, claims 1-7, 10, 13, and 16-17 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Kato* in view of *Koide et al.* (U.S. Patent 6,704,273), hereinafter *Koide*.

The Applicants respectfully point out that *Kato* was filed in the U.S. on January 13, 2004. The present application was filed in the U.S. on March 25, 2004 and claimed priority to Japanese Patent Application No. 2003-090510 filed on March 28, 2003. The March 28, 2003 foreign priority date of Japanese Patent Application No. 2003-090510 precedes the January 13, 2004 filing date of *Kato*. Therefore, *Kato* does not properly qualify as prior art. The above-described certified translation of the priority document, JP Application No. 2003-090510, will confirm that the above identified claims are fully supported by the original priority documents as filed in Japan. Accordingly, Applicants respectfully request withdrawal of the above-rejection of claims 1-7, 10, and 13 as allegedly unpatentable over *Kato* and withdrawal of the above-rejection of claims 1-7, 10, 13, and 16-17 as allegedly unpatentable over *Kato* in view of *Koide*.

4. Rejections Under 35 U.S.C. § 103(a)

In the Office Action, at paragraph 6, claims 1-5, 7, 10, and 13 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Hosoda et al.* (U.S. Patent Publication No. 2003/0118772), hereinafter *Hosoda*, in view of *Ichijo et al.* (U.S. Patent Publication No. 2003/0124458), hereinafter *Ichijo*, and *Nishihara et al.* (U.S. Patent Publication No. 2004/0047281), hereinafter *Nishihara*.

The Applicants respectfully point out that *Nishihara* was filed in the U.S. on August 8, 2003. The present application was filed in the U.S. on March 25, 2004 and claimed priority to Japanese Patent Application No. 2003-090510 filed on March 28, 2003. The March 28, 2003 foreign priority date of Japanese Patent Application No. 2003-090510 precedes the August 8, 2003 filing date of *Nishihara*. Therefore, *Nishihara* does not properly qualify as prior art. The above-described certified translation of the priority document, JP Application No. 2003-090510, will confirm that the above identified claims are fully supported by the original priority documents as filed in Japan. Accordingly, Applicants respectfully request withdrawal of the above-rejection of claims 1-5, 7, 10, and 13 as allegedly unpatentable over *Hosoda* in view of *Ichijo* and *Nishihara*.

5. Rejections Under 35 U.S.C. § 103(a)

In the Office Action, at paragraph 7, claims 1-5, 7, 10, and 13 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Oomachi et al.* (U.S. Patent Publication No. 2004/0076908), hereinafter *Oomachi*, in view of *Ichijo* and *Nishihara*.

The Applicants respectfully point out that *Oomachi* was filed in the U.S. on October 6, 2003 and that *Nishihara* was filed in the U.S. on August 8, 2003. The present application was filed in the U.S. on March 25, 2004 and claimed priority to Japanese Patent Application No. 2003-090510 filed on March 28, 2003. The March 28, 2003 foreign priority date of Japanese Patent Application No. 2003-090510 precedes both the October 6, 2003 filing date of *Oomachi* and the August 8, 2003 filing date of *Nishihara*. Therefore, *Oomachi* and *Nishihara* do not properly qualify as prior art. The above-described certified translation of the priority document, JP Application No. 2003-090510, will confirm that the above identified claims

are fully supported by the original priority documents as filed in Japan. Accordingly, Applicants respectfully request withdrawal of the above-rejection of claims 1-5, 7, 10, and 13 as allegedly unpatentable over *Oomachi* in view of *Ichijo* and *Nishihara*.

6. Rejections Under 35 U.S.C. § 103(a)

In the Office Action, at paragraph 8, claims 1, 2, 7, and 13 rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Kuroda et al.* (U.S. Patent 6,934,224), hereinafter *Kuroda*, in view of *Ichijo* and *Nishihara*.

The Applicants respectfully point out that *Nishihara* was filed in the U.S. on August 8, 2003. The present application was filed in the U.S. on March 25, 2004 and claimed priority to Japanese Patent Application No. 2003-090510 filed on March 28, 2003. The March 28, 2003 foreign priority date of Japanese Patent Application No. 2003-090510 precedes the August 8, 2003 filing date of *Nishihara*. The above-described certified translation of the priority document, JP Application No. 2003-090510, will confirm that the above identified claims are fully supported by the original priority documents as filed in Japan. Therefore, *Nishihara* does not properly qualify as prior art. Accordingly, Applicants respectfully request withdrawal of the above-rejection of claims 1, 2, 7, and 13 as allegedly unpatentable over *Kuroda* in view of *Ichijo* and *Nishihara*.

7. Rejections Under 35 U.S.C. § 103(a)

In the Office Action, at paragraph 9, claims 1-17 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over either *Hosoda*, *Oomachi*, or *Kuroda* combined with *Ichijo* and *Nishihara* and further in view of *Koide* and *Harigaya et al.* (EP 1260973), hereinafter *Harigaya*.

The Applicants respectfully point out that *Oomachi* was filed in the U.S. on October 6, 2003 and that *Nishihara* was filed in the U.S. on August 8, 2003. The present application was filed in the U.S. on March 25, 2004 and claimed priority to Japanese Patent Application No. 2003-090510 filed on March 28, 2003. The March 28, 2003 foreign priority date of Japanese Patent Application No. 2003-090510 precedes both the October 6, 2003 filing

date of *Oomachi* and the August 8, 2003 filing date of *Nishihara*. Therefore, *Oomachi* and *Nishihara* do not properly qualify as prior art. The above-described certified translation of the priority document, JP Application No. 2003-090510, will confirm that the above identified claims are fully supported by the original priority documents as filed in Japan. Accordingly, Applicants respectfully request withdrawal of the above-rejection of claims 1-17 as allegedly unpatentable over either *Hosoda*, *Oomachi*, or *Kuroda* combined with *Ichijo* and *Nishihara* and further in view of *Koide* and *Harigaya*.

8. Rejections Under 35 U.S.C. § 103(a)

In the Office Action, at paragraph 10, claims 1-3 and 5-9 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over *Harigaya* in view of *Nagata et al.* (U.S. Patent EP 1052632), hereinafter *Nagata*, in view of *Mizushima et al.* (WO 03/098619), hereinafter *Mizushima* WO 03/098619. At paragraph 11, claims 1-3, 5, 7-9, and 16-17 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over *Harigaya* further in view of *Koide*, *Nagata*, and *Mizushima*.

The Applicants respectfully point out that the *Mizushima* WO 03/098619 publication date is November 11, 2003. Although the *Mizushima* WO 03/098619 application was filed on March 22, 2003 and the U.S. was a designated state, the *Mizushima* WO 03/098619 application was originally filed in the Japanese language. Accordingly, the earliest valid date that the *Mizushima* WO 03/098619 reference can be used as prior art is its publication date of November 11, 2003. The present application was filed in the U.S. on March 25, 2004 and claimed priority to Japanese Patent Application No. 2003-090510 filed on March 28, 2003. The March 28, 2003 foreign priority date of Japanese Patent Application No. 2003-090510 precedes the November 11, 2003 publication date of *Mizushima* WO 03/098619. Therefore, *Mizushima* WO 03/098619 does not properly qualify as prior art. The above-described certified translation of the priority document, JP Application No. 2003-090510, will confirm that the above identified claims are fully supported by the original priority documents as filed in Japan. Accordingly, Applicants respectfully request withdrawal of the above-rejection of claims 1-3 and 5-9 as allegedly unpatentable over *Harigaya* in view of *Nagata* and *Mizushima* WO 03/098619, and respectfully

request withdrawal of the above-rejection of claims 1-3, 5, 7-9, and 16-17 as allegedly unpatentable over *Harigaya* further in view of *Koide, Nagata*, and *Mizushima* WO 03/098619.

9. Obviousness-Type Double Patenting Rejections

In the Office Action, at paragraph 13, claims 1-5, 7-10, and 12-16 have been *provisionally* rejected claims under the judicially created doctrine of obviousness-type double patenting as being obvious over U.S. Patent Application No. 10/824,081 filed by *Shingai et al.* At paragraph 14, claims 1-5, 7, 10, and 13 have been *provisionally* rejected claims under the judicially created doctrine of obviousness-type double patenting as being obvious over U.S. Patent Application No. 10/756,036 filed by *Kato et al.*

In the Office Action, as noted by the Examiner, a terminal disclaimer may be used to overcome a provisional rejection based on a non-statutory obviousness-type double patenting. The Applicants will consider filing a terminal disclaimer in the present application if one or both of these co-pending applications issue before the present application, and if the present application is still pending at that point. Otherwise, it is respectfully submitted that since none of these other co-pending applications have yet issued, the present application can be passed into allowance and issued without the filing of a terminal disclaimer. A terminal disclaimer may then be filed, if appropriate, in one or more of these other co-pending applications, based on the issuance of the present application.

Accordingly, the Applicants respectfully request that the provisional obviousness-type double patenting rejection be withdrawn, and that the pending claims be allowed. The Examiner is requested to telephone the undersigned attorney if any of the co-pending applications have issued prior to the present application so that the Applicants may file a terminal disclaimer if appropriate, or respond to the properness of a rejection of the claims of the pending application with respect to any issued claims of the co-pending applications, to expedite prosecution of the present application. Applicants are prepared to file a terminal disclaimer should any one of the co-pending applications issue as a patent and if the subject matter of the claims of such issuing patents is properly subject to a double patenting rejection.

10. Amendments to the Claims

Applicants wish to clarify that the amendment to claim 1 and canceling of claim 16 is not made in response to any rejection made by the Examiner during prosecution of the instant case based upon prior art of record. The amendment to claim 1 and canceling of claim 16 merely presents claims having a scope which the Applicants wish to pursue at this time. Accordingly, the amendment to claim 1 and canceling of claim 16 does not constitute subject matter surrender or create estoppel.

11. Conclusion

In light of the above amendments and remarks, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that all pending claims 1-15 and 17 are allowable. Applicants, therefore, respectfully request that the Examiner reconsider this application and timely allow all pending claims. The Examiner is encouraged to contact Mr. Armentrout by telephone to discuss the above and any other distinctions between the claims and the applied references, if desired.

If the Examiner notes any informalities in the claims, he is further encouraged to contact Mr. Armentrout by telephone to expediently correct such informalities.

Respectfully submitted,

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